IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 33686 of 2006(I)

CMA.7 & 15/2006 of SUB COURT, SULTHAN BATHERY
IA 790/05 IN OS.134/2005 of MUNI-MAGI.COURT,MANANTHAVADY
(IA 237/2006)
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PETITIONER:
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1. K.SARADHA, W/O. LATE KUTTAN NAMBIAR,
AGED 48 YEARS, THOZHOKATTU PUTHEN VEEDU,
ANJUKUNNU P.O., ANJUKUNNU VILLAGE,
MANANTHAVADY TALUK.

2. T.P.SOUMYA, D/O. LATE KUTTAN NAMBIAR,
AGED 21 YEARS, THOZHOKATTU PUTHAN VEEDU,
-DO- -DO-

3. SANAL T.P., S/O. LATE KUTTAN NAMBIAR,
AGED 17 YEARS, THOZHOKATTU PUTHAN VEEDU,
-DO-

BY ADV. SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR

RESPONDENTS:
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1. GOVINDAN NAMBIAR, AGED 72 YEARS,
S/O. KUNJKUTTY APPACHI, PUTHENVEETTIL (H),
ANJUKUNNU P.O., ANJUKUNNU VILLAGE,
MANANTHAVADY TALUK.

2. K.MINU, AGED 64 YEARS,
W/O. GOVINDAN NAMBIAR, -DO-

BY ADV.K.JAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.33686 OF 2006

Dated 21st December 2006

JUDGMENT

Petitioners are plaintiffs and respondents are defendants. Under Ext.P7 order passed in I.A.237/06 Munsiff, Mananthavady appointed an advocate receiver for plaint schedule properties in the application filed by respondents. Petitioners challenged that order before Sub court, Sulthan Bathery in C.M.A.15/06. Under Ext.P9 order learned Sub Judge dismissed the appeal. This petition is filed under Article 227 of Constitution of India challenging the said order. Petitioners contended that respondents who appeared before court below as defendants are not real defendants and they have no right to contest the suit. I.A.839/05 was filed before the trial court to ascertain the identity of the persons who appeared before the trial court as respondents.

2. Learned counsel appearing for petitioners and respondents were heard.

3. Argument of learned counsel appearing for petitioners is that respondents who appeared are not real defendants and they have no right over the property and as their identity was disputed without entering a finding on the identity, trial court should not have considered the application for appointment of receiver or appointed the receiver. Learned counsel also argued that coffee and pepper are now over ripe and petitioners are prepared to deposit Rs.75,000/- and they may be permitted to take the yield. Learned counsel appearing for respondents argued that it is for the petitioners to establish that respondents are not the defendants and on the evidence both courts have found that appointment of receiver is just necessary and in such circumstances no interference is warranted. Learned counsel also pointed out that the receiver appointed by the trial court has already taken charge on 29/11/2006 and it is for the receiver to decide how the yield is to be collected and the receiver could auction the usufructs in between plaintiffs and defendants. Learned counsel also submitted that the trial court can decide I.A.839/05 on its merits.

4. On hearing both the counsel, I do not find any reason to interfere with the appointment of

receiver under Ext.P7 order and confirmed by appellate court under Ext.P9 order, in exercise of the extra ordinary jurisdiction of this under Article 227 of Constitution of India. If petitioners could succeed in establishing their case set forth in I.A.839/05 they are at liberty to move the trial court to reconsider the order of appointment of receiver.

5. As it is represented by learned counsel appearing for petitioners that coffee and pepper are over ripe and to be collected from plaint schedule property, the court receiver, who had taken charge, is directed to auction the usufructs, between the plaintiffs and defendants, as early as possible and at any rate, within seven days from the date of receipt of copy of this judgment. Sub Judge is directed to dispose I.A.839/05 on merits as expeditiously as possible.

Writ petition is disposed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.